



## *Nevada State Board of Medical Examiners*

### **\* \* \* MINUTES \* \* \***

### **BOARD RETREAT MEETING OPEN SESSION**

**Held in the Seacliff D Meeting Room, Bay Level,  
at the Hyatt Regency San Francisco  
5 Embarcadero Center, San Francisco, CA 94111**

**and teleconferenced to**

**The Nevada State Board of Medical Examiners Conference Room  
1105 Terminal Way, Suite 301, Reno, Nevada 89502**

***WEDNESDAY, MAY 2, 2007 – 8:30 a.m.***

#### ***Board Members Present***

Javaid Anwar, M.D., President  
Sohail U. Anjum, M.D., Vice President  
Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer  
Charles N. Held, M.D.  
Jean Stoess, M.A.  
Cindy Lamerson, M.D.  
S. Daniel McBride, M.D.  
Benjamin J. Rodriguez, M.D.

#### ***Board Members Absent***

Marlene J. Kirch

#### ***Staff Present***

Drennan A. Clark, J.D., Executive Director/Special Counsel  
Laurie L. Munson, Deputy Executive Director/  
Information Systems Administrator/Chief of Administration  
Bonnie S. Brand, J.D., General Counsel  
Robert J. Barnet, M.D., Medical Reviewer  
Jerry C. Calvanese, M.D., Medical Reviewer  
Lynnette L. Daniels, Chief of Licensing  
Douglas C. Cooper, Chief of Investigations

#### ***Also Present***

Sally B. Hazzard, President, Hazzard Management Group, Meeting Facilitator

Agenda Item 1

**CALL TO ORDER AND ANNOUNCEMENTS**

- Roll Call/Quorum
- Javaid Anwar, M.D., President

The meeting was called to order by President Javaid Anwar, M.D., at 8:30 a.m.

Mr. Clark announced that there was a quorum, but that no decisions would be made and no action would be taken by the Board at this meeting.

Sally Hazzard introduced herself to the Board and staff and provided a procedural overview for the meeting.

Agenda Item 2

**DISCUSSION CONCERNING THE TEN-YEAR EXAMINATION RULE, NAC 630.080(2)**

Dr. Baepler stated that this has been a matter of concern for some time. The rule is not an issue for physicians who already have licenses in Nevada, as it does not apply to licensure renewal; but affects those who are applying for a new license in the state. There is a concern that good physicians are being discouraged from applying for licensure in Nevada because of this requirement, particularly those who are "grandfathered" in their particular specialties, meaning they are not required by their specialty boards to become recertified.

Discussion ensued concerning the purpose of the regulation and whether or not passage of an examination is a good indicator of a physician's ability to practice medicine.

Discussion ensued concerning creating a feedback process regarding performance of physicians after licensure.

Discussion ensued concerning the discrepancy in licensing requirements for physician assistants who work for M.D.s and those who work for D.O.s, and the necessity for uniformity in licensure requirements for all physician assistants, and possible collaboration with the D.O. Board concerning uniformity in rules and regulations in general.

Discussion ensued concerning a possible amendment to the regulation. Mr. Clark stated that staff would draft an amendment to the regulation to expand it to include physicians who are currently certified by the American Board of Medical Specialties and who have been actively practicing medicine, and would provide the amendment to the Board for review at a future Board meeting.

Agenda Item 3

**DISCUSSION CONCERNING PROS AND CONS OF USING A PEER REVIEW AS A SUBSTITUTE FOR THE REQUIREMENT OF A MAJOR EXAMINATION WITHIN TEN YEARS, OR OTHER DEFICIENCY; I.E., LACK OF THREE YEARS OF PROGRESSIVE POST-GRADUATE EDUCATION**

Dr. Lamerson stated that peer reviews have been utilized by the Board as a way to license physicians who are qualified to practice medicine in all other respects, but have not

taken a major examination within the ten years preceding his or her application for a Nevada license.

Discussion concerning how licensure by endorsement may change if pending legislation passes.

Dr. Lamerson asked whether there was a way to check all those who were granted a peer review and were subsequently licensed to see whether any have had disciplinary action taken against them by the Board, and Ms. Daniels stated she could do that.

Discussion ensued concerning standardization of peer reviews. Mr. Clark stated he would make inquiries to other states as to what standards and forms they may use for peer reviews.

Discussion ensued concerning reporting by hospitals to the Board of actions taken against the Board's licensees, more effective ways of communicating with the hospitals concerning reporting of incidents and disciplinary actions, and creating a climate where hospitals are more comfortable reporting to the Board.

Agenda Item 4

**DISCUSSION CONCERNING BOARD DEVELOPMENT OF A STANDARD TEMPLATE FOR  
PEER REVIEWS**

Dr. Lamerson stated that what the Investigative Committees are really looking for from a peer review is whether the standard of care was violated. She estimated that less than 25% of the time the peer reviews do not so state, so the Board wants to come up with a standardized template in order to assist the peer reviewers in providing the information the Investigative Committees need.

Dr. Calvanese said he has revised the current letter that is sent to peer reviewers which provides instructions and a format the peer reviewers should follow, and would like the Board to review it.

Dr. Baepler said the Board has to view a peer reviewer as an expert witness and might want to provide some suggestions, but shouldn't require them to follow a specific form which may be too restrictive.

Dr. Barnet stated it is difficult to find good peer reviewers and the number one priority should be to identify those peer reviewers who provide the Board with good peer reviews.

Discussion ensued concerning the possibility of utilizing "professional peer reviewers" in special cases.

Mr. Cooper stated he had talked with many of the Board's peer reviewers and they do not want to be limited to a certain format in providing their reviews.

Mr. Cooper stated the problem is that the Board doesn't have a sufficient pool of peer reviewers and doesn't have the money to adequately pay them. Many do not want to do a peer review for \$150 an hour. The format of the peer review isn't important; what is important is the contents of the review.

Discussion ensued concerning the current peer review procedure and the contents of the current letter sent to peer reviewers, and how those might be revised.

Dr. Baepler said the bottom line is that some peer reviewers provide great reviews and some are too perfunctory in their findings, so from that perspective what the Board has been doing is not working. The Board does not want to be too restrictive or rigid, but needs to provide peer reviewers with guidance as to the types of information that a peer review would normally include, in order to get some of them to elaborate a bit more.

Mr. Clark suggested that Ms. Brand assist Mr. Cooper in rewording the letter that goes to peer reviewers.

Dr. McBride suggested that the Board include a request for peer reviewers in its next newsletter.

Discussion ensued concerning the limitation in options available for sanctions at the Board level if the Board does not find that a licensee's action rises to the level of a violation of the Medical Practice Act, but thinks some remedial action should be taken by the licensee.

### **RECESS**

Dr. Anwar recessed the meeting for lunch at 12:00 p.m.

### **RECONVENE**

Dr. Anwar reconvened the meeting at 1:10 p.m.

#### Agenda Item 5

### **DISCUSSION CONCERNING REASONING BEHIND THE SEVEN-YEAR/NINE ATTEMPTS USMLE REGULATION, AND THE POSSIBILITY OF EXCEPTIONS**

Mr. Clark stated he has been told by the Federation of State Medical Boards that the Board is generous in allowing nine attempts to pass all three steps of the USMLE compared to other states, who typically allow fewer.

Dr. Rodriguez stated most states begin counting the number of attempts from passage of the first step, not from the first attempt at taking the first step test.

Discussion ensued concerning the purpose of the limitations.

Dr. Anwar asked whether there was any data showing a correlation between the number of attempts at the tests and the quality of the physician. Dr. Lamerson said that the Federation of State Medical Boards presented data to the Board that Steps 1 and 2 are not indicators of problems in the physician's future, but it has been shown that if a physician fails Step 3 more than twice, he or she is more likely to receive disciplinary action later in his or her career.

Discussion ensued concerning possible changes in the parameters for passage of the three steps of the test.

Ms. Daniels stated she would prepare a recommendation for the Board at a future Board meeting concerning revision of the number of attempts and time limitations, including a specific limit on the number of attempts to pass Step 3.

#### Agenda Item 8

#### **DISCUSSION REGARDING CREATION OF A COVER SHEET FOR APPLICATIONS**

Dr. Held stated the Board sees a lot of applicants who end up with problems because they don't fully disclose information, and thinks that an answer may be to create a cover sheet that applicants are required to sign stating they have read the application and understand that they are responsible for all of their responses, and warning them that if the Board discovers anything that has not been disclosed, the applicant will be in trouble.

Dr. Lamerson suggested the warning should include language to the effect that any false statements will be interpreted as lying.

Dr. Anjum suggested adding that any legal, disciplinary action or violation, or possible disciplinary action, must be stated appropriately.

Dr. McBride suggested wording to the effect that any discrepancies or misstatements may result in denial of the application.

Dr. Held volunteered to work with Ms. Daniels in developing the cover sheet and stated they would bring the proposed cover sheet to the Board at a future Board meeting for consideration and approval.

#### Agenda Item 6

#### **DISCUSSION CONCERNING INTERNSHIP ISSUE FOR M.D.S WHO HAVE NOT PRACTICED IN SOME TIME**

Dr. Baepler stated that as part of a disciplinary action, the Board had required one physician to complete a mini-internship program to return to practice, and over a period of two years, Ms. Brand, Mr. Clark, Dr. Montoya and Dr. Baepler had attempted to work with the Medical School to come up with a program to assist the physician, but the Medical School did not want to be involved. So the physician had to find a private group that would work with him. There has been one other physician who needed to find a program, who is currently working with a university in California.

Dr. Anwar stated the most desirable solution would be to work out a program with Nevada's university system, so there was a system in place whenever these situations arise.

Dr. McBride suggested going to the Legislature and request that they mandate that the University create a program for retraining physicians under special circumstances.

Ms. Brand suggested the Board create a task force to study the issue and develop a proposal for a program for physician re-entry into practice.

Dr. Baepler suggested that the Board first attempt to work out a program with the university, but if the Board cannot work out a system with the university, it can then go to the Legislature and request that it mandate one.

The consensus was to place consideration of appointment of a task force to develop a program for physician re-entry into practice on the agenda for a future Board meeting.

#### Agenda Item 9

#### **DISCUSSION CONCERNING ADJUDICATION PROCEDURES**

Ms. Brand requested suggestions from Board members as to how to improve the adjudication process.

Dr. Anwar asked whether there was any way the Board could instruct a licensee to take remedial action if it does not find a violation of the Medical Practice Act.

Ms. Brand suggested the Board could tell a licensee that it was a tough call, and even though the Board did not find a violation, the licensee would be well-advised to do this or that.

Dr. Baepler asked whether it would be legal for the Board to remand a case back to the Investigative Committee at the end of the adjudication, and Ms. Brand stated it would not.

Dr. Anwar stated what he would like to do is to make some remedial steps available to the Board when they find an issue does not rise to the level of a violation but thinks the licensee needs to take actions to improve his practice in some manner.

Mr. Cooper stated the only way to do that would be to change the law to allow it.

Dr. McBride suggested the Board could include in its order that although it did not find a violation had occurred, it did find certain things that were below standard, and although it would not be binding, it would put the licensee on notice as to the Board's concerns.

Ms. Brand stated she would look into the matter.

Discussion ensued concerning licensees with repeated violations.

Dr. Held suggested adding to the case history that goes before the Investigative Committees information concerning the outcome of any previous cases, rather than just stating, "case closed," as is done currently.

Dr. McBride suggested amending NRS 630.299 to read the Board may issue a letter of warning, a letter of concern or a non-punitive admonishment at any time before final action is taken on a case, instead of the current language that states it has to be done prior to initiation of disciplinary proceedings.

Dr. Baepler stated that the Board needs legal advice concerning whether it has any flexibility in its actions during adjudications other than whether there was or was not a violation of the Medical Practice Act.

Ms. Brand stated she would research the matter and advise the Board at a future date.

#### Agenda Item 10

### **DISCUSSION CONCERNING SCOPE OF PRACTICE OF MEDICAL ASSISTANTS**

Dr. Lamerson stated that when the Board first looked at the scope of practice of medical assistants, it seemed like a good idea to create a regulation, and they came up with something very specific. But when presenting it to a couple of physicians' groups, it was hotly contested because medical assistants are now being used in a lot of ways they haven't been used in the past, such as putting casts on patients, giving IV drugs, etc., and as medicine is changing they are being used more and more and will continue to be used more and more. And since medicine is changing rather quickly, it might be difficult to anticipate the changes. The majority of states do not have any laws regulating their practice. It now appears the best way to handle the issue is to be less specific and just ensure that medical assistants are adequately trained and properly supervised by physicians and if there are complications, the physicians are aware of them and responsible for them and are available to treat them. And when the Board does have cases where physicians are utilizing medical assistants in an inappropriate way and patients are being harmed, the Board needs to deal with those very strongly and firmly on the disciplinary end of things. The Board does not want to penalize physicians who are utilizing their medical assistants within the proper standard of care.

Dr. Barnet stated that other states use one of two qualifiers: one is under the supervision of, or under direct supervision of, physicians, or in other words, the doctor has to be on site, and the other is more liberal and if there are written guidelines outlining what should be done when the physician is not there, the physician does not have to be on site.

Dr. Lamerson stated other states are struggling with this same thing, in that it is difficult to define these parameters. Sometimes there are reasons to define them specifically and sometimes there are reasons to make them ambiguous. The majority of physicians are doing the right thing and if the Board makes them very specific the Board will get to the ones who are doing the right thing, and the ones that are doing the wrong thing are going to continue to do the wrong thing. She stated at this point the Board should just utilize the regulations that are already in place.

#### Agenda Item 11

### **DISCUSSION CONCERNING SANCTION OPTIONS AND PROBATIONARY CONDITIONS**

Ms. Brand stated she has reorganized the sanctions and probationary conditions by category and they are included in the meeting packet, and she will also make them available to the Board at the next Board meeting.

Agenda Item 12

**DISCUSSION CONCERNING SETTLEMENT PROCEDURES**

Ms. Brand stated this topic had already been covered.

Agenda Item 13

**REVIEW AND DISCUSS EXISTING REGULATIONS**

Ms. Brand stated she had included in the meeting packet for this meeting the most current set of regulations because they were not all included in the Board's statute and regulations pamphlet.

Agenda Item 14

**DISCUSSION CONCERNING M.D.S WHO ALSO HAVE HOMEOPATHIC LICENSES**

Mr. Clark stated the Homeopathic Board is trying to change the name of the board to the Integrative Medicine Board. Most of their proposed legislation has failed. There are two homeopaths who are having a power struggle over who should run the Board and they are trying to expand homeopathic practice. One thing they want to do is to be allowed to write prescriptions. Mr. Clark and Keith Lee have suggested that if they want to be able to write prescriptions, they also have to be licensed as either an M.D. or a D.O. There are currently 12 licensed M.D.s that are also homeopaths and 6 or 7 currently licensed D.O.s that are also homeopaths. There are about 41 licensed homeopaths in the state, and about 30 are practicing. The bottom line is if a homeopath is also licensed as an M.D. and he or she violates the Medical Practice Act, he or she cannot hide behind his or her homeopathic license and the Board will institute disciplinary action against him or her.

Dr. Barnet stated he was concerned with the inherent conflict of interest with these dual-licensed physicians when there is a clearly appropriate treatment by allopathic medicine standards but the physician offers only another treatment that has not been deemed appropriate to allopathic medicine, and for which the physician may also make a lot of money. Discussion ensued.

Agenda Item 15

**DISCUSSION CONCERNING EXPANDING THE LICENSEE INFORMATION ON THE WEBSITE TO INCLUDE THE NUMBER OF COMPLAINTS FILED AGAINST A LICENSEE**

Dr. Anwar stated there is no need to include the number of complaints filed against a licensee on the website.

Dr. Held stated there is an organization that issues report cards for Boards' websites and it might be worthwhile to take a look at all the things they are looking at.

Dr. Baepler stated the Board has debated what should be on the website numerous times and has decided that what is to be included on the website is only that which is required by statute, and that is what is there.

Agenda Item 16

**BOARD MEMBER COMMENTS**

Dr. Rodriguez stated the issue of non-physician spa personnel practicing medicine without a license by giving injections and using lasers without the physician seeing the patients before and after treatment and just signing off on the charts is something that should be brought before the legislature.

Ms. Daniels suggested consideration of adding a physician assistant and/or a respiratory therapist to the Board.

Ms. Stoess suggested revision of license application forms to use a larger type font and add some white space to make it easier to read.

Dr. McBride suggested the Board build a more formal relationship with the Legislature regarding pending legislation and provide more input as a Board instead of just hearing about the legislation after it's been processed, and that the Board could invite a legislative representative to attend a Board meeting once a year.

Agenda Item 17

**PUBLIC COMMENT**

The Board received no public comment.

**ADJOURNMENT**

Dr. Anwar adjourned the meeting at 4:03 p.m.